

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TACITA FAIR,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 4:17-CV-02391
)	
COMMUNICATIONS UNLIMITED,)	
INC., C.U. EMPLOYMENT, INC.,)	
COMMUNICATIONS UNLIMITED)	
CONTRACTING SERVICES, INC.,)	
COMMUNICATIONS UNLIMITED)	
ALABAMA, INC., and MARTIN C.)	
ROCHA,)	
)	
Defendant)	

**DEFENDANTS C.U. EMPLOYMENT, INC., COMMUNICATIONS UNLIMITED
CONTRACTING SERVICES, INC., AND MARTIN ROCHA’S
MOTION TO DISMISS PLAINTIFF’S COMPLAINT, OR IN THE ALTERNATIVE,
TO STAY AND COMPEL ARBITRATION**

Defendants C.U. Employment, Inc., Communications Unlimited Contracting Services, Inc., and Martin Rocha (collectively “Defendants”), hereby move this Court to compel arbitration. In support thereof, Defendants state as follows:

1. On September 11, 2017, Plaintiff Tacita Fair filed suit against Communications Unlimited, Inc., C.U. Employment, Inc., Communications Unlimited Contracting Services, Inc., Communications Unlimited Alabama, Inc., and Martin C. Rocha stating causes of action under the Fair Labor Standards Act (“FLSA”), and the Missouri Minimum Wage Law, on behalf of herself and others similarly situated. (*See* Doc. 1.)

2. On October 27, 2017, Defendants C.U. Employment, Inc. and Communications Unlimited Contracting Services, Inc. filed their Answer to Plaintiff's Complaint asserting, among other things, that Plaintiff's claims are covered by an Arbitration Agreement that precludes this lawsuit and mandates arbitration. (*See* Doc. 18, Affirmative Defenses ¶ 3.)

3. On January 3, 2018, Defendant Martin Rocha filed his Answer to Plaintiff's Complaint asserting, among other things, that Plaintiff's claims are covered by an Arbitration Agreement that precludes this lawsuit and mandates arbitration. (*See* Doc. 26, Affirmative Defenses ¶ 3.)

4. On June 21, 2018, Defendant Communications Unlimited Alabama, Inc. ("CUA") filed a Motion to Dismiss, or in the Alternative, to Stay and Compel Arbitration. In support of this Motion, CUA filed an arbitration agreement executed by Plaintiff in March of 2016 in which Plaintiff agrees to arbitrate "all claims or controversies" with CUA, "whether or not arising out of or related to [Plaintiff's] with" CUA, including claims for wages, salary, or compensation, and claims arising from alleged state law or FLSA violations. The arbitration agreement further prohibits such claims from being conducted as a class action or collective action. (*See* Doc. 78, Exhibit 1, and Doc. 79.)

5. Upon receiving a copy of the arbitration agreement signed by Plaintiff that was filed with CUA's Motion, Defendants determined that they are direct and/or third-party beneficiaries of the agreement. Specifically, that the arbitration agreement provides that it is applicable to any claims against CUA, CUA's agents, "or against its ... contractors ... customers ... to the extent [Plaintiff] assert a claim or claims against any of these designated individuals

or entities based on alleged acts or omissions undertaken for, on behalf of, and/or within the line and scope of [Plaintiff's] relationship with [CUA], i.e. a claim or claims relating to their official capacity for which I seek to impose, or could possibly impose, indirect, derivative, and/or vicarious liability against [CUA] or any of its customers.” (*See* Exhibit 1, attached.)

6. The arbitration agreement further states that all “gateway” questions to arbitrability will be determined by the Arbitrator, including, but not limited to, whether the parties entered into an agreement to arbitrate, and whether the agreement covers a particular controversy.

7. As such, Plaintiff's claims against Defendants should be dismissed on the basis of the arbitration agreement, or in the alternative, this action should be stayed so that the parties can arbitrate these disputes pursuant to the arbitration agreement, or any “gateway” questions to arbitrability raised by this dispute. Defendants have also filed a memorandum in support in conjunction with this Motion.

WHEREFORE, Defendants C.U. Employment, Inc., Communications Unlimited Contracting Services, Inc., and Martin Rocha, move this Court for its Order dismissing Plaintiff's Complaint and compelling Plaintiff to arbitrate her cause of action and claim against Defendants in accordance with the arbitration agreement to which Defendants are beneficiaries, or in the alternative, staying this action so that the issue of whether Defendants may enforce the arbitration agreement can be determined by an Arbitrator, and for further relief which the Court deems just and appropriate under the circumstances.

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Inc., and Martin Rocha

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2018, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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